

EXHIBIT A

United States District Court		District	Eastern Massachusetts
Name William Santiago		Prisoner No W55337	Case No.
Place of Confinement Souza Baranowski Correctional Center (SBCC) P.O. BOX 8000 / Harvard Rd. Shirley, MA. 014646-8000			
Name of Petitioner (include name under which convicted) William Santiago Petitioner		Name of Respondent (authorized person having custody of petitioner) Commonwealth Respondents	
The Attorney General of the State of: Massachusetts			
<i>Referred to NTTG Dept</i>			
PETITION			
1. Name and location of court which entered the judgment of conviction under attack		Chelsea District	
Court, 120 Broadway, Chelsea, MA. 02150			
2. Date of judgment of conviction		December 16, 2002	
3. Length of sentence		Not applicable (court fines)	
4. Nature of offense involved (all counts) 8714CR2106 Disorderly Person and Affray.			
9114CR3699 Assault and Battery. 9114CR3700 Malicious Destruction			
of Property under \$250.00 and Threatening To Commit a Crime.			
5. What was your plea? (Check one)			
(a) Not guilty		<input checked="" type="checkbox"/>	
(b) Guilty		<input type="checkbox"/>	
(c) Nolo contendere		<input type="checkbox"/>	
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:			
8714CR2106 NOT GUILTY (Admits Suff. facts) (paid court fines).			
9114CR3699 and 3700 NOT GUILTY (Nolle Prosequi)-(Filed without a			
change of plea).			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury		<input type="checkbox"/>	
(b) Judge only		<input checked="" type="checkbox"/>	
7. Did you testify at the trial?			
Yes <input type="checkbox"/>		No <input checked="" type="checkbox"/>	
8. Did you appeal from the judgment of conviction?			
Yes <input checked="" type="checkbox"/>		No <input type="checkbox"/>	

9. If you did appeal, answer the following:

- (a) Name of court Appeals Court No. 2003-P-1147
- (b) Result Affirmed
- (c) Date of result and citation, if known May 20, 2004, 61 Mass. App. Ct. 1106 (2004)
- (d) Grounds raised Basis to overcome the presumption of regularity, Timely motion for new trial. Motion for appointment of counsel not moot. (Reply Brief also submitted).
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court Supreme Judicial Court No. FAR 14164
- (2) Result Affirmed
- (3) Date of result and citation, if known June 30, 2004
- (4) Grounds raised Basis to overcome the presumption of Regularity.

Were the cases in 9114CR3699 and 3700 filed without appellant's consent.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court N/A
- (2) Result N/A
- (3) Date of result and citation, if known N/A
- (4) Grounds raised N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, application or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Chelsea District Court
- (2) Nature of proceeding Motion for a New Trial
- (3) Grounds raised Matters filed without a change of plea affect the defendants status within the Department of Correction. 9114CR3699 & 3700 only.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☒

(5) Result Not heard by the court yet.

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☒

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you *should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____ See attached _____

Supporting FACTS (state *briefly* without citing cases or law) _____

B. Ground two: _____ See attached _____

Supporting FACTS (state *briefly* without citing cases or law) _____

C Ground three: See attached

Supporting FACTS (state *briefly* without citing cases or law)

D. Ground four: See attached

Supporting FACTS (state *briefly* without citing cases or law)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly*, what grounds were not so presented, and give your reasons for not presenting them:

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked here

(a) At preliminary hearing Pro se

(b) At arraignment and plea Pro Se

(c) At trial Pro se

(d) At sentencing Pro se

(e) On appeal Pro se

(f) In any post-conviction proceeding Attorney Ronald Stone on the second Motion for
a New Trial, filed in the Chelsea District Court.

(g) On appeal from any adverse ruling in a post-conviction proceeding

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐ (see No. 15 (f) above.)


Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

N/A

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3 / 2 / 2004
(date)


Signature of Petitioner

Ground one: THERE WAS A BASIS TO OVERCOME THE PRESUMPTION OF REGULARITY IN THE CASES FROM THE CHELSEA DISTRICT COURT (LOWER COURT).

Facts (without caselaw):

Appellant filed his pro se Motion for New Trial on 12/11/02. (Ex. A). The appellant sent copies to the Suffolk District Attorney's Office and the Assistant District Attorney in the lower court.

The lower court denied the motion within five days of receiving it. without a hearing on 12/16/02. The lower court did not give opportunity for the opposing party to file an opposition. The lower courts reasons for the denial of the Motion for a New Trial was "because there was no basis to overcome the presumption of regularity" and the "motion was not timely filed." (Ex. A).

The judges of the original dockets are deceased or unavailable. The transcripts were destroyed pursuant to court rules. The record is constructed by the docket entry sheets and appellant's memory.

DOCKET NUMBER 8714CR2106

In docket No. 8714CR2106. Disorderly Person G.L. c. 272 s. 53 and Affray (No chapter or section given). (Ex. A). Appellant was without the assistance of counsel. There were no waivers or certificates found in the record stating that appellant elected to proceed without counsel. Appellant did did not waive any constitutional rights. There is no written

reference to a colloquy ever being done. 1/

Ground two: THE DOCKET NUMBERS 9114CR3699 AND 9114CR3700 WERE
FILED WITHOUT APPELLANT'S CONSENT.

Docket number 9114CR3699. Assault and Battery. G.L.
c. 265 s. 13A and docket number 9114CR3700. Malicious Destruction
of Property, G.L. c. 266 s. 127 and Threat to Commit a Crime,
G.L. c. 275 s. 2, were filed without a change of plea. 2/
This was done without appellant's consent.

Appellant did not give verbal or written permission to
his then attorney on these two dockets to file the cases,
"Filed without a change of plea."

In the record there can be found an affidavit filed by
the alleged complainant and the appellant stating that all
parties to the criminal matter agreed to dismiss the criminal
cases. (Ex. A).

This strongly suggests that the two docket numbers were
filed 3/ without the appellant's consent. He therefore is
entitled to consideration of merits of his claims of error
regarding the filed convictions.

1/ It was appellant's first dealings with the legal system and
he was unaware he was entitled to an attorney.

2/ Both of these docket numbers have the capitol letters "N.P."
in the disposition box. Which indicates Nolle Prosequi.
Nolle Prosequi= Prosecution wishes not to prosecute. He/she
abandoned the action. See Black's Law Dictionary.

3/ Filed cases remain subject to reactivation at anytime,
including removal from the file for imposition of a sentence.
They also can be and are used to enhance Federal sentences
See Com. v. Pingaro. 44 Mass.App.Ct. 41 (1997).